

SENATE BILL No. 115

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-1.1-12-17.9; IC 6-4.1; IC 29-1-8; IC 32-38.

Synopsis: Probate, trust, and inheritance tax matters. Provides that a trust is entitled to certain property tax deductions for real property owned by the trust if the property is occupied by an individual who has a beneficial interest in the trust, is considered to have a life estate in the real property, and otherwise qualifies for the deduction. Removes a provision that prevents individuals who are adopted as adults after June 30, 2004, from being considered Class A transferees for purposes of the inheritance tax. Increases the Class B transferee inheritance tax exemption amount from \$500 to \$20,000 and the Class C transferee inheritance tax exemption amount from \$100 to \$10,000. Increases from \$1,000 to \$5,000, for purposes of inheritance tax, the maximum amount that may be deducted from the value of property interests transferred by a resident decedent for the purchase of a memorial to the decedent. Increases the maximum gross value of a probate estate that may be settled without court administration from \$25,000 to \$50,000. Provides that a claimant seeking payment of a debt owed to a decedent or seeking to obtain personal property or an instrument evidencing a debt, an obligation, a stock, or a chose in action belonging to the decedent must include in the affidavit that the claimant submits to the debtor or person possessing the personal property or instrument: (1) the name and address of each other person entitled to a share of the property; and (2) a statement that the claimant has notified each other person identified in the affidavit of the claimant's intention to present the affidavit. Provides that the trustee of a trust to which an interest in real property is transferred is considered the insured owner under a title insurance policy issued for the interest in real property if the transfer meets certain conditions. (The introduced version of this bill was prepared by the probate code study commission.)

Effective: July 1, 2005 (retroactive); July 1, 2006.

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January 9, 2006, read first time and referred to Committee on Tax and Fiscal Policy.



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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 115

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-1.1-12-17.9 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2006]: **Sec. 17.9. A trust is entitled to a**
4 **deduction under section 9, 11, 13, 14, 16, or 17.4 of this chapter for**
5 **real property owned by the trust and occupied by an individual if**
6 **the county auditor determines that the individual:**

7 (1) **upon verification in the body of the deed or otherwise, has**
8 **a beneficial interest in the trust;**

9 (2) **otherwise qualifies for the deduction; and**

10 (3) **would be considered the owner of the real property under**
11 **IC 6-1.1-1-9(f).**

12 SECTION 2. IC 6-4.1-1-3, AS AMENDED BY P.L.238-2005,
13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2005 (RETROACTIVE)]: **Sec. 3. (a) "Class A transferee"**
15 **means a transferee who is a:**

16 (1) **lineal ancestor of the transferor;**

17 (2) **lineal descendant of the transferor;**



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(3) stepchild of the transferor, whether or not the stepchild is adopted by the transferor; or

(4) lineal descendant of a stepchild of the transferor, whether or not the stepchild is adopted by the transferor.

(b) "Class B transferee" means a transferee who is a:

(1) brother or sister of the transferor;

(2) descendant of a brother or sister of the transferor; or

(3) spouse, widow, or widower of a child of the transferor.

(c) "Class C transferee" means a transferee, except a surviving spouse, who is neither a Class A nor a Class B transferee.

(d) For purposes of this section, a legally adopted child is to be treated as if the child were the natural child of the child's adopting parent. ~~if the adoption occurred before the individual was totally emancipated. However, an individual adopted after being totally emancipated shall be treated as the natural child of the adopting parent if the adoption was finalized before July 1, 2004.~~

(e) For purposes of this section, if a relationship of loco parentis has existed for at least ten (10) years and if the relationship began before the child's fifteenth birthday, the child is to be considered the natural child of the loco parentis parent.

(f) As used in this section, "stepchild" means a child of the transferor's surviving, deceased, or former spouse who is not a child of the transferor.

SECTION 3. IC 6-4.1-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11. The first ~~five hundred twenty thousand~~ **twenty thousand** dollars ~~(\$500)~~ **(\$20,000)** of property interests transferred to a Class B transferee under a taxable transfer or transfers is exempt from the inheritance tax.

SECTION 4. IC 6-4.1-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 12. The first ~~one hundred ten thousand~~ **ten thousand** dollars ~~(\$100)~~ **(\$10,000)** of property interests transferred to a Class C transferee under a taxable transfer or transfers is exempt from the inheritance tax.

SECTION 5. IC 6-4.1-3-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 13. (a) For purposes of this section, the term "property subject to the inheritance tax" means property transferred by a decedent under a taxable transfer.

(b) The following items, and no others, may be deducted from the value of property interests transferred by a resident decedent under ~~his~~ **the decedent's** will, under the laws of intestate succession, or under a trust:

(1) the decedent's debts which are lawful claims against ~~his~~ **the**

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decedent's resident estate;

(2) taxes on the decedent's real property which is located in this state and subject to the inheritance tax, if the real property taxes were a lien at the time of the decedent's death;

(3) taxes on **the** decedent's personal property which is located in this state and subject to the inheritance tax, if the personal property taxes are a personal obligation of the decedent or a lien against the property and if the taxes were unpaid at the time of the decedent's death;

(4) taxes imposed on the decedent's income to date of death, if the taxes were unpaid at the time of ~~his~~ **the decedent's** death;

(5) inheritance, estate, or transfer taxes, other than federal estate taxes, imposed by other jurisdictions with respect to intangible personal property which is subject to the inheritance tax;

(6) mortgages or special assessments which, at the time of **the** decedent's death, were a lien on any of **the** decedent's real property which is located in this state and subject to the inheritance tax;

(7) **the** decedent's funeral expenses;

(8) amounts, not to exceed ~~one~~ **five** thousand dollars (~~\$1,000~~), **(\$5,000)**, paid for a memorial for the decedent;

(9) expenses incurred in administering property subject to the inheritance tax, including but not limited to reasonable attorney fees, personal representative fees, and trustee fees;

(10) the amount of any allowance provided to the resident decedent's children by IC 29-1-4-1; and

(11) the value of any property actually received by a resident decedent's surviving spouse in satisfaction of the allowance provided by IC 29-1-4-1, regardless of whether or not a claim for that allowance has been filed under IC 29-1-14.

(c) The amounts which are deductible under subsection (b)(6) of this section are deductible only from the value of the real property encumbered by the mortgage or special assessment.

SECTION 6. IC 29-1-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) Forty-five (45) days after the death of a decedent and upon being presented an affidavit that complies with subsection (b), a person:

(1) indebted to the decedent; or

(2) having possession of personal property or an instrument evidencing a debt, an obligation, a stock, or a chose in action belonging to the decedent;

shall make payment of the indebtedness or deliver the personal

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property or ~~an~~ the instrument evidencing a debt, an obligation, a stock, or a chose in action to a person claiming to be entitled to payment or delivery of property of the decedent.

(b) The affidavit required by subsection (a) must be an affidavit made by or on behalf of the claimant ~~stating that:~~ **and must state the following:**

(1) **That** the value of the gross probate estate, wherever located (less liens and encumbrances), does not exceed ~~twenty-five~~ **fifty** thousand dollars ~~(\$25,000)~~, **(\$50,000)**.

(2) **That** forty-five (45) days have elapsed since the death of the decedent.

(3) **That** no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction. ~~and~~

(4) The name and address of each other person that is entitled to a share of the property and the part of the property to which each person is entitled.

(5) That the claimant has notified each person identified in the affidavit of the claimant's intention to present an affidavit under this section.

~~(4)~~ **(6) That** the claimant is entitled to payment or delivery of the property **on behalf of each person identified in the affidavit.**

(c) If a motor vehicle or watercraft (as defined in IC 9-13-2-198.5) is part of the estate, nothing in this section shall prohibit a transfer of the certificate of title to the motor vehicle if five (5) days have elapsed since the death of the decedent and no appointment of a personal representative is contemplated. A transfer under this subsection shall be made by the bureau of motor vehicles upon receipt of an affidavit containing a statement of the conditions required by subsection (b)(1) and ~~(b)(4)~~: **(b)(6)**. The affidavit must be duly executed by the distributees of the estate.

(d) A transfer agent of a security shall change the registered ownership on the books of a corporation from the decedent to a claimant upon the presentation of an affidavit as provided in subsection (a).

(e) For the purposes of subsection (a), an insurance company that, by reason of the death of the decedent, becomes obligated to pay a death benefit to the estate of the decedent is considered a person indebted to the decedent.

(f) For purposes of subsection (a), property in a safe deposit box rented by a decedent from a financial institution organized or reorganized under the law of any state (as defined in IC 28-2-17-19) or

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the United States is considered personal property belonging to the decedent in the possession of the financial institution.

SECTION 7. IC 29-1-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) If it appears that the value of a decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of:

- (1) ~~twenty-five~~ **fifty** thousand dollars ~~(\$25,000);~~ **(\$50,000);**
- (2) the costs and expenses of administration; and
- (3) reasonable funeral expenses;

the personal representative or a person acting on behalf of the distributees, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to it and file a closing statement as provided in section 4 of this chapter.

(b) If an estate described in subsection (a) includes real property, an affidavit may be recorded in the office of the recorder in the county in which the real property is located. The affidavit must contain the following:

- (1) The legal description of the real property.
- (2) The following statement: "It appears that the decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of the following: ~~twenty-five~~ **fifty** thousand dollars ~~(\$25,000);~~ **(\$50,000)**, the costs and expenses of administration, and reasonable funeral expenses."
- (3) The name of each person entitled to at least a part interest in the real property as a result of a decedent's death, the share to which each person is entitled, and whether the share is a divided or undivided interest.
- (4) A statement which explains how each person's share has been determined.

SECTION 8. IC 29-1-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative or a person acting on behalf of the distributees may close an estate administered under the summary procedures of section 3 of this chapter by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

- (1) to the best knowledge of the personal representative or person acting on behalf of the distributees the value of the gross probate estate, less liens and encumbrances, did not exceed the sum of:
 - ~~(A) the allowance, if any, provided by IC 29-1-4-1;~~
 - (A) fifty thousand dollars (\$50,000);**

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(B) the costs and expenses of administration; and

(C) reasonable funeral expenses;

(2) the personal representative or person acting on behalf of the distributees has fully administered the estate by disbursing and distributing it to the persons entitled to it; and

(3) the personal representative or person acting on behalf of the distributees has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom ~~he~~ **the personal representative or person acting on behalf of the distributees** is aware and has furnished a full account in writing of ~~his~~ **the** administration to the distributees whose interests are affected.

(b) If no actions, claims, objections, or proceedings involving the personal representative or person acting on behalf of the distributees are filed in the court within three (3) months after the closing statement is filed, the appointment of the personal representative or the duties of the person acting on behalf of the distributees terminate.

(c) A closing statement filed under this section has the same effect as one (1) filed under IC 29-1-7.5-4.

(d) A copy of any affidavit recorded under section 3(b) of this chapter must be attached to the closing statement filed under this section.

SECTION 9. IC 29-1-8-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4.5. The person claiming to be entitled to payment or delivery of the property belonging to the decedent may present to the court having jurisdiction over ~~the~~ decedent's estate an affidavit containing a statement of the conditions required under ~~subdivisions (1) through (4) of section 1(a)~~ **section (1)(b)** of this chapter. Upon receipt of the affidavit, the court may, without notice and hearing, enter an order that the claimant is entitled to payment or delivery of the property.

SECTION 10. IC 32-38 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

ARTICLE 38. TITLE INSURANCE AND TRANSFERS TO CERTAIN TRUSTS

Chapter 1. Application

Sec. 1. This article applies to a policy or commitment issued after June 30, 2006.

Chapter 2. Definitions

Sec. 1. The definitions in IC 27-7-3-2 apply throughout this article.

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1 **Sec. 2. "Commitment" means a commitment for title insurance.**

2 **Sec. 3. "Estate" has the meaning set forth in IC 29-1-1-3.**

3 **Sec. 4. "Named insured owner" means the person identified in**
 4 **a policy or commitment as the insured owner or the proposed**
 5 **insured owner of an interest in real property that is insured or**
 6 **proposed to be insured under the policy or commitment.**

7 **Sec. 5. "Personal representative" has the meaning set forth in**
 8 **IC 29-1-1-3.**

9 **Sec. 6. "Policy" means a title insurance policy.**

10 **Sec. 7. "Power of appointment" means a power of appointment**
 11 **described in IC 32-17-6.**

12 **Sec. 8. "Trust" has the meaning set forth in IC 30-4-1-1.**

13 **Chapter 3. Transfers to Certain Trusts**

14 **Sec. 1. The trustee of a trust is considered to be the insured**
 15 **owner under a policy or commitment that insures or proposes to**
 16 **insure an interest in real property that is transferred to the trust**
 17 **if:**

18 (1) the transferee of the interest in real property is the trustee
 19 of the trust, the trust was established by the named insured
 20 owner, and the transferor is the named insured owner;

21 (2) the named insured owner reserves the right to amend or
 22 revoke the trust during the named insured owner's lifetime;

23 (3) the named insured owner is a natural person; and

24 (4) the transfer of the interest in real property is made by the
 25 named insured owner personally or by:

26 (A) the named insured owner's attorney in fact;

27 (B) the named insured owner's guardian or other similar
 28 person in a guardianship or protective proceeding in which
 29 the named insured owner is an incapacitated or a
 30 protected person; or

31 (C) the personal representative of the deceased named
 32 insured owner's estate under the terms and conditions of
 33 the named insured owner's last will and testament;

34 **even if the named insured owner transfers the interest in real**
 35 **property to the trustee described in this section after the effective**
 36 **date of the policy or commitment.**

37 **SECTION 11. [EFFECTIVE JULY 1, 2006] Actions taken before**
 38 **July 1, 2006, that would have been valid under IC 6-1.1-12-17.9, as**
 39 **added by this act, are legalized and validated.**

40 **SECTION 12. [EFFECTIVE JULY 1, 2005 (RETROACTIVE)]**
 41 **IC 6-4.1-1-3, as amended by this act, applies to the estate of an**
 42 **individual who dies after June 30, 2005.**

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1 SECTION 13. [EFFECTIVE JULY 1, 2006] **IC 6-4.1-3-11 and**
2 **IC 6-4.1-3-12, both as amended by this act, apply to the estate of an**
3 **individual who dies after June 30, 2006.**

4 SECTION 14. [EFFECTIVE JULY 1, 2006] **IC 6-4.1-3-13, as**
5 **amended by this act, applies to the estate of an individual who dies**
6 **after June 30, 2006.**

7 SECTION 15. [EFFECTIVE JULY 1, 2006] **IC 29-1-8-1,**
8 **IC 29-1-8-3, IC 29-1-8-4, and IC 29-1-8-4.5, all as amended by this**
9 **act, apply to the estate of an individual who dies after June 30,**
10 **2006.**

11 SECTION 16. **An emergency is declared for this act.**

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